Jagged Coal, Inc. *and* United Mine Workers of America, District 17, Sub-District 3. Case 9–CA–28907

January 24, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

Upon a charge and an amended charge filed by the United Mine Workers of America, District 17, Sub-District 3 (the Union) on September 11, 1991, and October 21, 1991,[1] the General Counsel of the National Labor Relations Board issued a complaint against Jagged Coal, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On November 25, the General Counsel filed a Motion for Summary Judgment. On December 2, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that counsel for the General Counsel by letter dated November 5, notified the Respondent that unless an answer was received by November 12, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, has been engaged in coal mining operations at the mine site located near Holden, West Virginia. During the 12 months prior to the issuance of the complaint in this proceeding, the Respondent, in the course and conduct of its business operations, provided services valued in excess of $50,000 for Island Creek Coal Company, an enterprise within the State of West Virginia. During that same period of time, Island Creek Coal Company, in the course and conduct of its business operations, sold and shipped from its West Virginia facilities products, goods, and materials valued in excess of $50,000 directly to points outside the State of West Virginia. We find that Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All employees of Jagged Coal, Inc. engaged in the production of coal, including removal of overburden and coal waste, preparation, processing, and cleaning of coal and transportation of coal, except by waterway or rail not owned by Jagged Coal, Inc., repair and maintenance work normally performed at the mine site or a central shop of Jagged Coal, Inc. and maintenance of gob piles and mine roads, and work of the type customarily related to all of the above at the coal lands, coal producing and coal preparation facilities owned or operated by Jagged Coal, Inc. excluding all coal inspectors, weigh bosses at mines where men are paid by the ton, watchmen, clerks, engineering and technical employees and all professional employees, guards and supervisors and defined in the Act.

Since about January 5, 1990, and at all times material, the Union, by virtue of Section 9(a) of the Act, has been the designated exclusive collective-bargaining representative of the unit described above for purposes of collective bargaining with respect to rates of pay, wages, hours, and other terms and conditions of employment, and since that date the Union has been recognized as the representative by the Respondent. Recognition has been

[1] All dates are in 1991 unless otherwise indicated.

embodied in a collective-bargaining agreement, the National Bituminous Coal Wage Agreement of 1988, between the Respondent and the Union Mine Workers of America, on behalf of its various districts, sub-districts and locals, including the Union, which is effective by its terms until February 1, 1993.

Since about March 11, the Respondent has failed to continue in full force and effect all the terms and conditions of the collective-agreement agreement, described above, by failing to provide the level of health benefits set forth in that agreement. The terms and conditions of the agreement that the Respondent has failed to continue in full force and effect, as described above, are terms and conditions of the employees in the above-decribed unit and are mandatory subject of bargaining. We find that by the above-described conduct the Respondent has failed and refused and is failing and refusing to bargain collectively and in good faith with the Union and has thereby violated Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

CONCLUSIONS OF LAW

By failing and refusing to continue in full force and effect all the terms of the parties' collective-bargaining agreement by failing to provide the level of health benefits set forth in that agreement, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Sections 8(a)(5) and (1), 8(d), and 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. We shall order the Respondent to provide the level of health benefits set forth in the parties' collective-bargaining agreement, and we shall further order the Respondent to make whole unit employees for any expenses incurred as a result of its failure to provide the contractually required level of health benefits, with interest in the manner set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). See *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981).

ORDER

The National Labor Relations Board orders that the Respondent, Jagged Coal, Inc., Holden, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to continue in full force and effect all the terms of the parties' collective-bargaining agreement by failing to provide the level of health benefits set forth in that agreement.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide the level of health benefits set forth in the parties' collective-bargaining agreement.

(b) Make whole employees in the following appropriate unit for any expenses incurred as a result of the failure to provide the contractually required level of health benefits, in the manner set forth in the remedy section of this decision:

> All employees of Jagged Coal, Inc. engaged in the production of coal, including removal of overburden and coal waste, preparation, processing, and cleaning of coal and transportation of coal, except by waterway or rail not owned by Jagged Coal, Inc., repair and maintenance work normally performed at the mine site or a central shop of Jagged Coal, Inc. and maintenance of gob piles and mine roads, and work of the type customarily related to all of the above at the coal lands, coal producing and coal preparation facilities owned or operated by Jagged Coal, Inc. excluding all coal inspectors, weigh bosses at mines where men are paid by the ton, watchmen, clerks, engineering and technical employees and all professional employees, guards and supervisors as defined in the Act.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(d) Post at its facility in Holden, West Virginia, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reason-

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

able steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail and refuse to provide the level of health benefits set forth in our collective-bargaining agreement with the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL provide the level of health benefits set forth in our collective-bargaining agreement with the Union.

WE WILL make whole unit employees for any expenses incurred as a result of our failure to provide the contractually required level of health benefits, with interest. The unit is:

> All employees of Jagged Coal, Inc. engaged in the production of coal, including removal of overburden and coal waste, preparation, processing, and cleaning of coal and transportation of coal, except by waterway or rail not owned by Jagged Coal, Inc., repair and maintenance work normally performed at the mine site or a central shop of Jagged Coal, Inc. and maintenance of gob piles and mine roads, and work of the type customarily related to all of the above at the coal lands, coal producing and coal preparation facilities owned or operated by Jagged Coal, Inc. excluding all coal inspectors, weigh bosses at mines where men are paid by the ton, watchmen, clerks, engineering and technical employees and all professional employees, guards and supervisors as defined in the Act.

JAGGED COAL, INC.